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Evidence--Admissibility to Vary the Plain Meaning of a Word in a Will

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is no such a thing as a partial alienation of affections, it is enough to say that experience and observation show the fact to be far otherwise." *Fratini* v. *Caslini,* 66 Vt. 273, 29 Atl. 252. The fact that plaintiff was at fault in causing his wife to leave will not prevent his recovery, when defendant prevents a reconciliation. *Prettyman* v. *Williamson,* 1 Pennewill (Del.) 224, 39 Atl. 731. Defendant's motive is important in determining liability for alienation of affections. The interference by defendant must be culpable and calculated to produce that result. If defendant is a stranger, there is a presumption of bad notice. But if defendant is a member of the immediate family of plaintiff's wife or husband, malice or bad motive must be proved. *Gross* v. *Gross, supra; Ratcliffe* v. *Walker, supra.* See SCHOULER, DOMESTIC RELATIONS, 5th ed., 41. The cases cited have, it is apparent, gone much farther than the court found it necessary to go in the principal case, in applying the law in regard to alienation of affections to peculiar facts. Thus the West Virginia court, while its decision in this case is progressive in its nature, does not depart from the path of judicial precedent or advance any doctrine not approved by respectable authority. —C. L. W.

EVIDENCE—ADMISSIBILITY TO VARY THE PLAIN MEANING OF A WORD IN A WILL.—Testator, by his will, gave to his brother, the plaintiff, a farm. Other items of the will were bequests to relatives. The last item directed payment of the residue of the estate to "the above-named legatees." Plaintiff, seeking to share in the residuary estate, offered evidence to prove that testator did not use the word "legatees" in the technical sense, but that when he dictated the will to the scrivener, he had said that the residuary estate should be paid to "the above-named persons." *Held,* parole evidence of intention of testator was not admissible. *Hobbs* v. *Brenneman,* 118 S. E. 546 (W. Va. 1923).

The exclusion of this evidence, together with other evidence showing that it was the intention of the testator to favor the plaintiff in the drawing up of the will, seems to indicate that the decision has defeated the intention of the testator by the application of the strict rule. The court has followed a line of

decisions upon which the case is sought to be justified. *French* v. *French,* 14 W. Va. 458; *Whelan* v. *Reilly,* 5 W. Va. 356; *Couch* v. *Eastham,* 29 W. Va. 784, 3 S. E. 23; *Cresap* v. *Cresap,* 34 W. Va. 310, 12 S. E. 527. The strict rule also has the endorsement of Mr. Justice Holmes. *Goode* v. *Riley,* 153 Mass. 585, 28 N. E. 228; see Holmes, "The Theory of Legal Interpretation," 12 HARV. L. REV. 417, 420. But the old theory that words have a fixed meaning that can not be varied by parol evidence has been strongly attacked, and the modern tendency is toward a more liberal interpretation. See WIGMORE, EVIDENCE, 2462. Business men generally use loose interpretations of words, and a common sense interpretation of what the party meant, obtained, if necessary, through the use of intrinsic evidence, is preferable to the injustice that will arise from a strict interpretation. *Myers* v. *Sarl,* 3 E. & E. 306; *In re Jodrell,* L. R. 44 Ch. Div. 590. Neither, in the construction of a contract . . . . . will the evidence be excluded because the words are in their ordinary meaning not ambiguous. What words more plain than "a thousand," "a day," "a week"? Yet the cases are familiar in which "a thousand" has been held to mean "twelve hundred"; "a day," "a working day;" and "a week," "a week only during the theatrical season." *Brown* v. *Byrne,* 3 E. & E. 703. The strict rule is violated every day in the use of codes for cablegrams and telegraphic dispatches. The liberal rule would have been the preferable one to apply in the principal case. It has been applied even to the extreme of principle, and the results show how practical and just it can be. *Robb's Estate,* 37 S. C. 19, 16 S. E. 241. The following case which has not been overruled, seems decisive of the question under discussion. The testator made a bequest to a friend, S, son of X. On proof that a person named W was the son of X, and that the testator had usually called him S, the bequest was given to W, although X had a son living named S. *Powell* v. *Biddle,* 2 Dall. (Pa.) 70. See *Kohl* v. *Frederick,* 115 Iowa 517. These cases show that the court there recognized that the standard to be applied in determining the meaning of a word is a unilateral standard. The inquiry then becomes, what is the meaning of the word in the mind of the testator? This could have been determined more accurately, and with surer justice, in the principal case, if the court had admitted the evidence offered to show what the testator meant by the use of the word "legatees."

—H.L.S.,Jr.